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No. 90-343

In The

Supreme Court of the United States

October Term, 1990

FLOSSIE WILLIAMS McMURRY,

Petitioner,

v.

STEVEN AMOS, CHANCERY CLERK, COPIAH COUNTY, MISSISSIPPI, BOARD OF SUPERVISORS, COPIAH COUNTY, MISSISSIPPI, and ERMA D. LEWIS, TAX COLLECTOR FOR THE CITY OF CRYSTAL SPRINGS, MISSISSIPPI,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

I.

DOES THE PETITIONER'S OWN INADVERTENT REDEMPTION OF PROPERTY SOLD TO HER FOR TAXES SUBJECT THE RESPONDENTS TO POTENTIAL CIVIL RIGHTS LIABILITY?

II.

DID THE PETITIONER PRODUCE ANY EVIDENCE OF RACIAL DISCRIMINATION WHICH WOULD HAVE PREVENTED THE DISTRICT COURT FROM DISMISSING HER CLAIM UNDER 42 U.S.C. § 1982?

PARTIES

Respondents Steven Amos and the Board of Supervisors of Copiah County, Mississippi, are satisfied with the parties to the appeal as stated by the Petitioner. It should be noted, however, that this response is being filed only on behalf of Respondents Amos and the Board of Supervisors of Copiah County, Mississippi. The attorney for Amos and the Board of Supervisors does not represent and has not represented any other Respondents during this action.

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to *Miss. Code Ann.* §27-45-3 (1972), which the petitioner claims is involved, the petitioner has also discussed 42 U.S.C. §1982 and 42 U.S.C. §1983.

TITLE 42 §1982. PROPERTY RIGHTS OF CITIZENS.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

TITLE 42 §1983. CIVIL ACTION FOR DEPRIVATION OF RIGHTS.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The case presently before the Court actually emanates from a long-standing family dispute over property located at 106 Forest Street, Crystal Springs, Copiah

County, Mississippi. On June 14, 1977, Ms. Willie Williams Douglas, the record owner of the property, executed a document entitled "Warranty Deed" in favor of the Petitioner, Flossie Williams McMurry ("McMurry"). In the late summer of 1978, suit was filed by Willie Williams Douglas and others against McMurry requesting a rescission of the document entitled "Warranty Deed". Although Ms. Douglas died during the pendency of the action, the suit was prosecuted by the remaining complainants.

On or about January 31, 1979, the Chancery Court of Copiah County, Honorable Chancellor Michael T. Carr presiding, entered an order rescinding the Warranty Deed that McMurry had obtained from Ms. Douglas. Petitioner McMurry appealed this ruling to the Supreme Court of Mississippi, but the Chancellor's decision was affirmed without opinion. *McMurry v. Douglas*, 385 So.2d 1306 (1980).

When the 1980 taxes on the property were not paid, the property was advertised for sale by Respondent Steve Amos, who at that time was the Copiah County Tax Collector. At the annual tax sale on September 21, 1981, the property was sold to McMurry for the 1980 delinquent county taxes. By purchasing the property at the tax sale, Petitioner obtained an interest in the property subject to the two year redemption period set forth in *Miss. Code Ann.* §27-45-3 (1972).

On January 4, 1982, the property was redeemed by payment of the past due county taxes plus penalties, interest, and costs. Although the Release from Delinquent Tax Sale shows payment by Willie Williams Douglas, the

person that actually paid the past due county taxes plus penalties and costs was Petitioner McMurry. Sometime prior to January 4, 1982, McMurry had been instructed by a Mississippi attorney to pay the Copiah County property taxes. However, by paying the past due taxes, Petitioner redeemed the property such that title reverted to the record owner.

McMurry or someone on her behalf paid the county taxes for 1982 and 1983. The 1984 county taxes were not paid in a timely fashion and the property was advertised for tax sale in the summer of 1985. On August 26, 1985, the property was sold for delinquent 1984 county taxes to Amelia Williams, McMurry's mother. On October 14, 1985, the property was redeemed by J. Cliff Thomas on behalf of Flossie Williams, one of the complainants in the Copiah County Chancery Court action filed in 1978 who obtained a share of title to the property upon the Chancery Court's rescission of the deed to McMurry.

After the redemption of the property by J. Cliff Thomas for Flossie Williams on October 14, 1985, the property has not been sold for delinquent taxes. McMurry or someone on her behalf has continued to pay all property taxes, even though the Chancery Court of Copiah County ruled that she had no interest in the property by virtue of the Warranty Deed dated June 14, 1977 and even though her redemption of the property effectively took away the interest she obtained through the tax sale. Throughout the pendency of this matter, Petitioner has maintained she has had an interest in the property. In fact, in 1988 Petitioner even used the deed previously rescinded in 1979 to trick the Copiah County

Tax Assessor's office into listing her as the owner of the property on the tax rolls.

The case presently before the Court is not the only suit in which McMurry has made allegations of racial discrimination in connection with this property. In addition to the Copiah County Chancery Court proceeding in which McMurry was a defendant, Petitioner filed a suit in 1985 entitled "Flossie Williams McMurry v. Edwin Lloyd Pittman, Attorney General, State of Mississippi, and Minnie Bell Levi", Civil Action No. J85-0819(B), United States District Court, Southern District of Mississippi, Jackson Division. Judge William H. Barbour, Jr., who also presided at the trial court in the present case, dismissed that lawsuit on grounds that McMurry did not have a protected property interest. Suit was also filed by McMurry in 1983 in United States District Court for the Eastern District of Michigan in Detroit, Michigan. The defendants in that case included Judge Michael Carr, the Chancellor who presided in the Copiah County suit; Lawrence Hood, the Chancery Clerk of Copiah County at the time; and James D. Shannon, McMurry's attorney in the Copiah County suit. That suit also alleged racial discrimination but was dismissed.

Although such is not shown of record, McMurry instituted another federal court suit after Judge Barbour dismissed the present action, this time against Chancery Judge Carr in the Eastern District of Michigan. Entitled "McMurry v. Carr", and being Civil Action No. 89-CV-73706-DT, this action was transferred to the Southern District of Mississippi, where it became Civil Action No. J90-0134(B). Judge Barbour again dismissed the case and awarded sanctions against Petitioner. Finally, since that

dismissal, Petitioner has filed still another federal court case in the Eastern District of Michigan, this time against the Supreme Court of Mississippi. The case styled "McMurry v. Supreme Court of Mississippi, et al", Civil Action No. 90-CV-72111-DT, has not yet been transferred to the Southern District of Mississippi.

SUMMARY OF THE ARGUMENT

Petitioner has stated no grounds upon which this Court customarily grants a writ of certiorari. She has cited no decision from a Court of Appeals which conflicts with the decision of the Court of Appeals for the Fifth Circuit in this case. There was no important question of federal law which was in issue, and there was no case from this Court which was clearly contravened by the decisions of the trial court or the appeals court.

Petitioner's claim arises from allegations that Section 1982 and Section 1983 were violated because she was not issued a tax deed to real property which she had purchased at a tax sale. Petitioner was not entitled to a tax deed until the Mississippi statutory redemption period had run. McMurry herself inadvertently redeemed the property, thereby voiding her purchase at the tax sale such that it was her own action which prevented her from obtaining the property.

McMurry's claim under Section 1983 is without merit because the Copiah County Respondents against whom suit is brought did not deprive the Petitioner of any right. Any "deprivation" is more accurately called a surrender

since it occurred as a result of McMurry's acts in redeeming the property, albeit inadvertently. However, McMurry received documentation at the time of the redemption showing that a redemption had occurred such that she had notice of her mistaken payment and could have taken steps to try to correct it *at that time,* not six years later.

McMurry's allegations of race discrimination, which arise from her Section 1982 claim, are also totally without merit because they are without factual support. By inadvertently redeeming the property from the tax sale, McMurry effectively perfected title back in the original owners. These original owners, who were relatives of McMurry, were also black Americans. This clearly establishes that McMurry's race had nothing to do with the refusal to give Petitioner a tax deed. Further, Petitioner is collaterally estopped from making any claim for her failure to appeal other federal court cases she filed for the same causes of action.

Finally, Petitioner's argument regarding vicarious liability of the county under Section 1982 is moot simply because, without any substantive liability, the issue of whether vicarious liability applies to Section 1982 actions is irrelevant. Since Ms. McMurry has been completely unable to offer facts which would support a viable claim against any individual Copiah County respondent, no claim can exist against the county or its governing body.

ARGUMENT

I. SINCE McMURRY FAILED TO APPEAL A PREVIOUS ADVERSE DECISION ON THE SAME FACTUAL AND LEGAL CLAIMS WHICH SHE IS NOW PRESENTING, SHE IS BARRED BY THE DOCTRINES OF COLLATERAL ESTOPPEL AND FEDERAL CLAIM PRECLUSION FROM RELITIGATING THOSE CLAIMS.

As can be seen from the Statement of Facts, the case presently before the Court is neither the first case nor the last case which Petitioner has filed arising from these same facts. Instead, this case is only one of about six cases which have been filed or are presently pending regarding this piece of property and the actions of various persons with regard to that property. Interestingly enough, United States District Court Judge William H. Barbour, Jr., who presided in the district court on this case, also decided one of the previous cases based upon the same claims of racial discrimination and constitutional deprivation. As he recognized in his opinion dismissing the case, his ruling was the same in that previous case as it was in this case. See Petition for Writ of Certiorari, Appendix C-2. In both suits, Judge Barbour held that McMurry had no right to a tax deed because the property was redeemed. McMurry now tries to avoid the effect of that redemption by claiming that the redemption was not valid.

However, any claim that the redemption was not valid should have been pursued in the case filed back in 1985. By failing to appeal an adverse judgment on the issue of the validity of the redemption, and in fact on all of the same issues presently before this Court, McMurry is barred from attempting to re-litigate those issues.

Holmes v. Jones, 738 F.2d 711 (5th Cir. 1984). For this reason, if no other, McMurry's Petition for Writ of Certiorari should be denied.

II. RESPONDENTS AMOS AND THE COPIAH COUNTY BOARD OF SUPERVISORS WERE ENTITLED TO SUMMARY JUDGMENT BECAUSE THE PETITIONER DID NOT HAVE A PROTECTED PROPERTY INTEREST WHICH WAS UNCONSTITUTIONALLY TAKEN FROM HER.

The Petitioner's claim against Respondents Amos and the Copiah County Board of Supervisors is that she was unconstitutionally denied a tax deed on the property. Judge Barbour in his opinion ruled for the second time that McMurry's claim was without merit because the property was redeemed, although inadvertently, prior to the time that McMurry had a right to demand a tax deed.[1] In attempting to avoid the effect of this redemption, McMurry now argues that the redemption was invalid such that summary judgment should have been precluded.

The entire thrust of McMurry's argument regarding the validity of the redemption is that she was not within the class of persons entitled to redeem the property. However, Section 27-45-3 states that "any person interested in the land sold for taxes" can redeem the property.

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[1] *Miss. Code Ann.* §27-45-3 (1972) sets up a two year redemption period after the tax sale. Since the tax sale on the property occurred on September 21, 1981, McMurry's claim for a tax deed would not ripen until September 22, 1983, during which time that right could be voided by redemption of the property. The redemption at issue occurred on January 4, 1982, well within the two year period.

At the time of the redemption on January 4, 1982, McMurry was "interested" in the property since she had purchased it at a tax sale. The fact that her payment of the back taxes took away the interest she had to the property does not make the redemption invalid. Mississippi law has always recognized that "statutes allowing the right of redemption from tax sales are to be liberally and benignly construed in favor of the right to redeem." *Darrington v. Rose*, 128 Miss. 16, 90 So. 632, 634 (1922). *See also Bonds v. Greer*, 56 Miss. 710 (1879).

When McMurry showed up to pay the back taxes on the property on January 4, 1982, she claimed the property as her own, as she has done ever since she obtained the deed from Willie Williams Douglas, which the Copiah County Chancery Court ultimately voided.[2] After all

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[2] The record is replete with instances of McMurry's claiming ownership of the property. During her deposition, she contended that the Warranty Deed from Willie Williams Douglas was still valid and could not be cancelled or rescinded. (McMurry Deposition, p. 38). In fact, in 1988, McMurry, or someone on her behalf, used the original deed from Willie Williams Douglas, which had been rescinded by court order, to trick the Copiah County Tax Assessor's office into placing Flossie B. Williams McMurry's name on the tax rolls for the property. (Barlow deposition, p. 4-7). McMurry admitted in her deposition that she has claimed an interest in the property ever since she began paying taxes on it. (McMurry deposition, p. 42). She even states in her interrogatory answers that she had an interest in the property when she bought it at the tax sale in 1981. (Interrogatory Answer No. 11, Plaintiff's Discovery Responses, p. 9). If she had an interest in the property at the time of the tax sale, then she is a tenant in common and cannot wrest title away from her co-tenants through a tax sale purchase. *See Whelchel v. Solomon*, 180 So.2d 642 (Miss. 1965).

these years of having claimed an interest in the property, McMurry now wants to put the burden on a county tax collector or chancery clerk to first determine ownership of the property and then tell her she does not have an interest in the property sufficient to allow her to redeem it. With McMurry's past history, however, one wonders how a chancery clerk or tax assessor could convince her she has no interest in the property when a chancellor's ruling telling her that was completely ineffective. Nonetheless, the rulings of the Supreme Court of Mississippi simply do not require this of state officials. "When one, claiming to be the owner of land sold for taxes, offers to redeem, the officer before whom the redemption is sought to be made *is not required to try the title of such alleged owner.*" *Darrington v. Rose*, 128 Miss. 16, 90 So. 632, 634 (1922) (emphasis added).

McMurry also claims that she does not fall within the category of a person who acted with the owner's consent because there was an ongoing dispute between her and the heirs who had obtained ownership of the property. However, it seems somewhat strange for McMurry to say that the record owners objected to her paying the taxes. As the Mississippi Supreme Court has recognized, one who pays the taxes of another without a legal compulsion is a mere volunteer, and that is exactly what McMurry was in this case. *See Adams v. Taylor*, 149 Miss. 750, 115 So. 878 (1928). Additionally, as was noted in *Jamison v. Thompson*, 65 Miss. 516, 5 So. 107 (1888), "redemption [is] for the benefit of the owner, *whoever he may be.*" *Jamison*, 5 So. at 108 (emphasis added).

Interestingly enough, in arguing that she had no interest in the property at the time of the redemption,

McMurry has conclusively established that the summary judgment was proper. Before a plaintiff can recover for alleged civil rights violations, there must be some constitutionally protected property interest. By arguing she had no interest in the property, such that the redemption was invalid, McMurry surrenders a vital element of her claim. Without an interest in the property, McMurry's Section 1983 claim must be dismissed. However, with a property interest, the redemption was valid, and she lost any future claim for a tax deed.

One must even wonder if a purchaser at a tax sale has a property interest sufficient to invoke constitutional protection under Section 1983. State law determines whether a particular claim is a property interest for purposes of the civil rights acts. *Connally v. Board of Trustees of Grenada County Hospital*, 707 F.2d 175, *reh. den.* 716 F.2d 901 (5th Cir. 1983). In the case at bar, McMurry's interest in the property was that of a tax sale purchaser. The Supreme Court of Mississippi has recognized the contingent nature of such an interest.

> [T]he purchaser at a tax sale . . . buys with full knowledge that his title cannot be absolute until the time for redemption expires, and that, if his title is defeated by redemption, it reverts to the original owner, and if it is redeemed, he is fully reimbursed for his outlay, with interest.

Darrington, 90 So. at 634. Since a tax purchaser's interest is contingent, until such contingency occurs, his interest is simply not entitled to protection under state law, and therefore not under the civil rights acts.

The contingent, and therefore unprotected, nature of McMurry's tax deed claim is easily seen when the

remaining Mississippi statutes regarding tax sales and redemptions are examined. McMurry apparently wants the Court to believe that, if she had not redeemed the property herself, she would have ultimately obtained a tax deed because the property would not have been redeemed within the two year period. However, Section 27-43-1 and Section 27-43-3 of the Mississippi Code require that notice be given to property owners within 180 days and not less than 60 days prior to the expiration of redemption time. This notice is required to be *personally served* on the owner if the owner is a resident. If these statutory provisions are not satisfied, the original owner may have the tax deed cancelled. *Hart v. Catoe*, 390 So.2d 1001 (Miss. 1980). Consequently, all that McMurry could have even conceivably lost by virtue of her inadvertent redemption was the hope that the true owners would not respond to the personally served notice required by state law. Since the required notices were not sent out, petitioner is not presently entitled to a tax deed. The Mississippi Supreme Court has long recognized a right of equitable redemption, even after the statutory period has run, where there are extenuating circumstances showing a reason for non-payment of taxes. *Levy v. McCay*, 445 So.2d 546 (Miss. 1984); *Kron v. Van Cleave*, 339 So.2d 559 (Miss. 1976). In this case, a Mississippi court would certainly apply equitable redemption where the owners have not been given the statutorily required notice that the property needed to be redeemed. Consequently, at this point in time, McMurry has no right to a tax deed, even assuming the invalidity of the redemption, such that the Petition for Writ of Certiorari should be denied.

III. PETITIONER'S CLAIM UNDER SECTION 1982 WAS PROPERLY DISMISSED BECAUSE OF THE PETITIONER'S FAILURE TO PROVIDE ANY EVIDENCE OF RACIAL DISCRIMINATION.

Petitioner has claimed that the Court erred in dismissing her suit and in failing to recognize her theory of liability under 42 U.S.C. §1982, which prohibits racial discrimination in the purchase, sale and ownership of property. Petitioner contends that she was not given a tax deed simply because she is a black American. However, Petitioner produced no evidence whatsoever in support of her allegations. Petitioner apparently believes that the mere fact that she was not given a tax deed, when coupled with the fact that she is a black American, somehow translates into proof that the reason she did not get the tax deed was related to her race.

However, as was discussed earlier in the brief, the Petitioner's inability to get a tax deed had absolutely nothing whatsoever to do with her race. She was not given a tax deed because the property was redeemed from the tax sale within the two year statutory period.

The fact that Petitioner's race had nothing to do with the situation presently before the Court is most clearly shown by the fact that the record title owners, who are relatives of the Petitioner, are also black Americans. This is not an instance where the alleged actions of the Copiah County Respondents resulted in a white American obtaining title to the property over a black American. Proof of racial animus, either directly or by statistics, was totally absent from Ms. McMurry's case such that the

lower court acted correctly in dismissing the Petitioner's suit.[3]

The Petitioner also discusses in her filing the district court's ruling regarding an alleged immunity issue. The issue before the lower court was not immunity but instead involved the vicarious liability issue under the Civil Rights Acts. The district court simply recognized that vicarious liability is not a viable theory under §1983. However, even if it is assumed that the Copiah County Board of Supervisors could be liable under a vicarious liability theory for a Section 1982 violation, the failure of the Petitioner to provide any evidence whatsoever indicating racial animus by the individual Respondents makes the issue moot. Without the ability to show any individual acts of discrimination, there is no individual liability which can vicariously put responsibility on the Board of Supervisors. Consequently, the Petition for Writ of Certiorari should be denied.

CONCLUSION

McMurry's whole case flows from an allegation that the Copiah County Respondents acted deliberately, intentionally, and recklessly to divest her of her right to be issued a tax deed after September 21, 1983. However, a

[3] McMurry's petition seems to imply that the trial court dismissed her case for failure to state a claim on which relief could be granted. However, these Respondents had filed a motion for summary judgment, complete with deposition references, interrogatory citations, and documents. Consequently, the dismissal was under Rule 56, not Rule 12(b)(6).

review of McMurry Deposition Exhibit 8, which McMurry forwarded to this Court with her petition, clearly indicates that it is a Release from Delinquent Tax Sale and that "said land is hereby released from all claim or title of state or purchaser under said tax sale". Anyone reading the document can easily ascertain that the property had been redeemed and the tax sale voided. It is hard to understand how McMurry can claim that the Copiah County Respondents acted maliciously when a simple examination of the documents she received when she paid the back taxes would indicate that she had redeemed the property. As the Mississippi Supreme Court has recognized, a person cannot claim to avoid the effect of a document simply by failing to review it. *Zepponi v. Home Insurance Co.*, 248 Miss. 828, 161 So.2d 524 (1964); *Fornea v. Goodyear Yellow Pine Co.*, 181 Miss. 50, 178 So. 914 (1938).

In any event, Petitioner's own actions in mistakenly redeeming the property can not be construed as a governmentally sponsored taking such that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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